

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BRITISH TELECOMMUNICATIONS PLC,
and BT NEWGATE LLC,

Plaintiffs

v.

ADAPTIVE SPECTRUM AND SIGNAL
ALIGNMENT, INC.,
WINDSTREAM CORPORATION,
WINDSTREAM COMMUNICATIONS, INC.,
WINDSTREAM KDL, INC., CAVALIER
TELEPHONE MID-ATLANTIC, L.L.C.,
INTELLIFIBER NETWORKS, INC.,
MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC., US LEC OF
PENNSYLVANIA, LLC, and PAETEC
COMMUNICATIONS, INC.,

Defendants.

Civil Action No.: _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, British Telecommunications plc and BT Newgate LLC (collectively referred to herein as “BT”) bring this Complaint against Defendants Adaptive Spectrum and Signal Alignment, Inc. (“ASSIA”), Windstream Corporation, Windstream Communications, Inc., Windstream KDL, Inc., Cavalier Telephone Mid-Atlantic, L.L.C., Intellifiber Networks, Inc., McLeodUSA Telecommunications Services, Inc., US LEC of Pennsylvania, LLC, and Paetec Communications, Inc., and allege as follows:

INTRODUCTION

1. This is an action for patent infringement. BT is a global telecommunications company with a long history of achieving cutting-edge advancements in the field of telecommunications. The BT patents involved in this case relate to inventions that can be used

for the implementation and management of Digital Subscriber Line (“DSL”) services. In particular, the patents disclose technologies that enable communications service providers to better manage and deliver DSL services. Defendants have misappropriated BT’s patented technology without BT’s permission and without compensating BT for use of the BT technology. This lawsuit seeks to hold the Defendants accountable for using and misappropriating BT technology – and to prevent them from continuing to use and misappropriate BT’s technology – without BT’s permission and without compensating BT.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff British Telecommunications plc (“BT plc”) is a corporation organized and existing under the laws of the United Kingdom.

3. Plaintiff BT Newgate LLC (“BT Newgate”) is a limited liability company organized and existing under the laws of the State of Delaware.

4. On information and belief, Defendant Adaptive Spectrum and Signal Alignment, Inc. (“ASSIA”) is a corporation organized and existing under the laws of the State of California.

5. On information and belief, Defendant Windstream Corporation (“Windstream Corp.”) is a corporation organized and existing under the laws of the State of Delaware providing DSL services, directly or indirectly, in the State of Delaware.

6. On information and belief, Defendant Windstream Communications, Inc. is a corporation organized and existing under the laws of the State of Delaware providing DSL services, directly or indirectly, in the State of Delaware.

7. On information and belief, Defendant Windstream KDL, Inc. is a corporation organized and existing under the laws of the State of Kentucky providing DSL services, directly or indirectly, in the State of Delaware.

8. On information and belief, Defendant Cavalier Telephone Mid-Atlantic, L.L.C. is a limited liability company organized and existing under the laws of the State of Delaware providing DSL services, directly or indirectly, in the State of Delaware.

9. On information and belief, Defendant Intellifiber Networks, Inc. is a corporation organized and existing under the laws of the State of Virginia providing DSL services, directly or indirectly, in the State of Delaware.

10. On information and belief, Defendant McLeodUSA Telecommunications Services, Inc. is a corporation organized and existing under the laws of the State of Iowa providing DSL services, directly or indirectly, in the State of Delaware.

11. On information and belief, Defendant US LEC of Pennsylvania, LLC is a limited liability company organized and existing under the laws of the State of North Carolina providing DSL services, directly or indirectly, in the State of Delaware.

12. On information and belief, Defendant Paetec Communications, Inc. is a corporation organized and existing under the laws of the State of Delaware providing DSL services, directly or indirectly, in the State of Delaware.

13. On information and belief, Windstream Communications, Inc., Windstream KDL, Inc., Cavalier Telephone Mid-Atlantic, L.L.C., Intellifiber Networks, Inc., McLeodUSA Telecommunications Services, Inc., US LEC of Pennsylvania, LLC, and Paetec Communications, Inc. are all Subsidiaries of Windstream Corp. Windstream Communications, Inc., Windstream KDL, Inc., Cavalier Telephone Mid-Atlantic, L.L.C., Intellifiber Networks, Inc., McLeodUSA Telecommunications Services, Inc., US LEC of Pennsylvania, LLC, and Paetec Communications, Inc. are hereinafter referred to (collectively and individually) as the “Windstream Subsidiaries.”

14. On information and belief, each one of the Windstream Subsidiaries is authorized by the Delaware Public Service Commission to provide telecommunications services in the State of Delaware.

15. On information and belief, Windstream Corp. directs and/or controls the conduct of the Windstream Subsidiaries such that the Windstream Subsidiaries constitute alter egos and/or agents of Windstream Corp., which manages, organizes, and implements the sales, marketing and operational policies and directions of each of the Windstream Subsidiaries.

16. Windstream Corp. and the Windstream Subsidiaries are hereinafter referred to (collectively and individually) as “Windstream” unless otherwise noted.

17. ASSIA and Windstream are hereinafter referred to (collectively and individually) as “Defendants” unless otherwise noted.

18. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

19. This Court has personal jurisdiction over ASSIA for at least the reasons that ASSIA: (i) advertises, markets, sells, offers to sell, and provides the infringing ASSIA DSL Expresse systems to ASSIA customers, including Windstream, with the knowledge, expectation, and intent that the infringing product will be offered and used in the State of Delaware, (ii) provides, configures, and operates the infringing ASSIA DSL Expresse systems for ASSIA customers in the State of Delaware, and (iii) has continuous and systematic contacts with the State of Delaware.

20. This Court has personal jurisdiction over Windstream Corp., Windstream Communications, Inc., Cavalier Telephone Mid-Atlantic, L.L.C., and Paetec Communications, Inc. for at least the reason that each of these companies is incorporated in Delaware.

21. Additionally, this Court has personal jurisdiction over Windstream Corp. and the Windstream Subsidiaries because Windstream Corp. and the Windstream Subsidiaries: (i) sell, offer to sell, market, and provide DSL services within the State of Delaware using the ASSIA DSL Expresse systems that infringe the Patents-in-Suit, and (ii) have continuous and systematic contacts with this forum, including for example, by providing telecommunications services within the State of Delaware.

22. Venue is proper in this district under 28 U.S.C. § 1400(b) and § 1391(b) and (c).

23. The claims asserted herein against the Defendants arise out of “the same transaction, occurrence, or series of transactions, or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process.” Further, this action will raise “questions of fact common to all defendants.” As such, joinder of these Defendants is appropriate under 35 U.S.C. § 299(a)(1)-(2).

BACKGROUND

24. BT is the oldest telecommunications company in the world, tracing its origins back to the Electric Telegraph Company, which was incorporated in England in 1846. Today, more than 160 years after its founding, BT provides communications services in 170 countries and employs more than 100,000 people worldwide.

25. In addition to providing global telecommunications services, BT’s business involves creating new technologies that facilitate and improve communication services and the operation of telecommunications networks. BT is the owner of the patents asserted in this litigation.

26. From its earliest beginnings, BT has been at the forefront of research and innovation in the world of communications, starting with BT's nineteenth century adaption of then-leading-edge telegraphy, including the world's first commercial telegraph service.

27. In 1975, BT opened its renowned research facility at Adastral Park, near Ipswich in the county of Suffolk, England. Adastral Park has housed some of world's leading technology researchers and engineers, whose inventive efforts led to the issuance of more than 10,000 patents by the turn of this century. The innovations created at Adastral Park include the world's first instantaneous translation of speech by computer, advanced video-on-demand services, commercial optical fiber transmission, the world's fastest regenerator, and the world's first fully automated "spam buster" system to track down and tackle professional spammers.

28. One of the areas in which BT has heavily invested over the last twenty years is Digital Subscriber Line ("DSL") technology, which BT recognized early on would revolutionize the way that many people communicate.

29. BT's extensive work in this field has led to numerous BT patents in the fields of DSL network implementation and network management, including the Patents-in-Suit, which relate to inventions that can be used for the implementation and management of DSL networks and services, including technologies that enable communications service providers to better manage and deliver DSL services.

THE PATENTS-IN-SUIT

30. On July 6, 1999, the United States Patent and Trademark Office duly and legally issued United States Letters Patent No. 5,920,565 ("the Cullen '565 Patent"), entitled "Method and Apparatus for Intranetwork Communication." BT plc is the assignee of the entire right, title,

and interest in and to the Cullen '565 Patent. A true and correct copy of the patent is attached as Exhibit A to this complaint.

31. On July 13, 1999, the United States Patent and Trademark Office duly and legally issued United States Letters Patent No. 5,923,247 ("the Dowden '247 Patent"), entitled "Fault Monitoring." BT plc is the assignee of the entire right, title, and interest in and to the Dowden '247 Patent. A true and correct copy of the patent is attached as Exhibit B to this complaint.

32. On May 29, 2001, the United States Patent and Trademark Office duly and legally issued United States Letters Patent No. 6,240,450 ("the Sharples '450 Patent"), entitled "Network Data Visualization System and Method for Downloading Visualization Software to a User Station After User Authentication." BT plc is the assignee of the entire right, title, and interest in and to the Sharples '450 Patent. A true and correct copy of the patent is attached as Exhibit C to this complaint.

33. On October 30, 2012, the United States Patent and Trademark Office duly and legally issued United States Letters Patent No. 8,300,528 ("the Everett '528 Patent"), entitled "Method and Apparatus for Communicating Data over a Data Network Including Controlling Bandwidth over a DSL Line." BT Newgate is the assignee of the entire right, title, and interest in and to the Everett '528 Patent, and BT plc is the exclusive licensee of the Everett '528 patent by virtue of an exclusive license granted by BT Newgate to BT plc. A true and correct copy of the patent is attached as Exhibit D to this complaint.

34. On November 12, 2013, the United States Patent and Trademark Office duly and legally issued United States Letters Patent No. 8,582,460 ("the Croot '460 Patent"), entitled "Data Communications." BT Newgate is the assignee of the entire right, title, and interest in and to the Croot '460 Patent, and BT plc is the exclusive licensee of the Croot '460 patent by virtue

of an exclusive license granted by BT Newgate to BT plc. A true and correct copy of the patent is attached as Exhibit E to this complaint. The Cullen '565 Patent, Dowden '247 Patent, Sharples '450 Patent, Everett '528 Patent and Croot '460 Patent are collectively referred to as the Patents-in-Suit.

35. ASSIA's DSL Expresse suite of products, as currently offered, sold, implemented, and used by ASSIA and its customers (e.g., Windstream, Verizon, Sonic.net, and others) infringe the BT Patents-in Suit.

36. BT has put ASSIA on notice of ASSIA's infringement of the aforementioned Patents-in-Suit. ASSIA nevertheless infringed and has continued infringing one or more claims of each of these patents.

37. Further, by means of this complaint, BT has put Windstream on notice of the aforementioned Patents-in-Suit and, as set forth more fully below, Windstream has infringed and is infringing one or more claims of these patents.

COUNT I
ASSIA's INFRINGEMENT

38. BT re-alleges and incorporates paragraphs 1-37 above.

39. Without license or authorization, ASSIA has been and is directly infringing, contributing to and/or inducing infringement of the Patents-in-Suit by offering, selling, providing and/or using ASSIA's DSL Expresse products to manage the provision and delivery of DSL services throughout the United States and in Delaware in a manner that uses the BT inventions claimed in the Patents-in-Suit. In particular, ASSIA offers, sells and provides the infringing DSL Expresse products to DSL network operators throughout the United States and in Delaware.

40. ASSIA implements the infringing DSL Expresse products into the DSL networks of its customers, and ASSIA also offers for sale, sells, and operates the infringing DSL Expresse

products in a “Software as a Service” arrangement whereby ASSIA uses its DSL Expresse suite of products to configure and monitor the DSL networks of its customers.

41. ASSIA’s activities infringe BT’s patent rights under 35 U.S.C. §§ 271 (a), (b), and (c). On information and belief, ASSIA has continued to infringe and to actively induce and/or contribute to the infringement of the patents in suit after receiving notice of its infringement of those patents.

42. More particularly with respect to the Cullen ‘565 patent, ASSIA has directly infringed, actively induced the infringement of, and/or contributorily infringed by, for example, making, using, offering to sell and selling its DSL Expresse suite of products to operate or control a communications system that comprises a network of functional elements and application process elements, as claimed by the Cullen ‘565 patent.

43. More particularly with respect to the Dowden ‘247 patent, ASSIA has directly infringed, actively induced the infringement of, and/or contributorily infringed by, for example, making, using, offering to sell and selling its DSL Expresse suite of products, including the DSL Expresse ClearView system, to monitor telecommunications systems for occurrences of conditions causing unavailability of the system to the user, as claimed by the Dowden ‘247 patent.

44. More particularly with respect to the Sharples ‘450 patent, ASSIA has directly infringed, actively induced the infringement of, and/or contributorily infringed by, for example, making, using, offering to sell and selling its DSL Expresse suite of products, including the DSL Expresse ClearView system, to provide a remote user with data visualization of data stored in a database in a form which can be queried by data visualization software tools, as claimed by the Sharples ‘450 patent.

45. More particularly with respect to the Everett '528 patent, ASSIA has directly infringed, actively induced the infringement of, and/or contributorily infringed by, for example, making, using, offering to sell and selling its DSL Expresse suite of products to provision an interface device, which interfaces between an access network and a back-bone network, as claimed by the Everett '528 patent.

46. More particularly with respect to the Croot '460 patent, ASSIA has directly infringed, actively induced the infringement of, and/or contributorily infringed by, for example, making, using, offering to sell and selling its DSL Expresse suite of products to control the rate at which data is transferred between the user devices and an onward connection, as claimed by the Croot '460 patent.

47. ASSIA's conduct not only usurps BT's technology but also undermines BT's reputation and goodwill, such that BT has no adequate remedy at law.

48. The infringement activities of ASSIA have caused damage to BT's rights. The extent of damage suffered by BT and caused by ASSIA is not yet known, but the damage is substantial and will be determined in the course of litigation.

49. ASSIA's infringement of the Patents-in-Suit has been knowing, deliberate, willful, and in reckless disregard of BT's rights.

50. It is apparent that ASSIA will continue its infringing activities, damaging BT, unless and until enjoined by this Court.

COUNT II
WINDSTREAM'S INFRINGEMENT

51. BT re-alleges and incorporates paragraphs 1-50 above.

52. Without license or authorization, Windstream (by and through the conduct of Windstream Corp., the Windstream Subsidiaries, and their agents) has been and is directly

infringing the Patents-in-Suit by implementing, operating, and/or using, ASSIA's DSL Expresse products to manage DSL services throughout the United States and in Delaware in a manner that infringes the BT inventions claimed in the Patents-in-Suit.

53. Windstream's activities infringe BT's patent rights under 35 U.S.C. §§ 271 (a).

54. More particularly with respect to the Cullen '565 patent, Windstream, directly and by and through its agents, has directly infringed by, for example, implementing, operating, and using ASSIA's DSL Expresse suite of products to operate or control a communications system that comprises a network of functional elements and application process elements, as claimed by the Cullen '565 patent by using the ASSIA DSL Expresse system to configure and provision DSL lines.

55. More particularly with respect to the Dowden '247 patent, Windstream, directly and by and through its agents, has directly infringed by, for example, implementing, operating, and using ASSIA's DSL Expresse suite of products, including the ASSIA DSL Expresse ClearView system, to monitor Windstream's telecommunications system for occurrences of conditions causing unavailability of the system to the user, as claimed by the Dowden '247 patent.

56. More particularly with respect to the Sharples '450 patent, Windstream, directly and by and through its agents, has directly infringed by, for example, implementing, operating, and using ASSIA's DSL Expresse suite of products, including the ASSIA DSL Expresse ClearView system, to provide a remote user with data visualization (e.g., to a Windstream network technician or similar), of data stored in a database in a form which can be queried by a data visualization software tool, as claimed by the Sharples '450 patent.

57. More particularly with respect to the Everett '528 patent, Windstream, directly and by and through its agents, has directly infringed by, for example, implementing, operating, and using ASSIA's DSL Expresse suite of products to provision an interface device, which interfaces between an access network and a back-bone network, as claimed by the Everett '528 patent.

58. More particularly with respect to the Croot '460 patent, Windstream, directly and by and through its agents, has directly infringed by, for example, implementing, operating, and using ASSIA's DSL Expresse suite of products to control the rate at which data is transferred between the user devices and an onward connection, as claimed by the Croot '460 patent.

59. Windstream's conduct not only usurps BT's technology but also undermines BT's reputation and goodwill, such that BT has no adequate remedy at law.

60. The infringement activities of Windstream have caused damage to BT's rights. The extent of damage suffered by BT and caused by Windstream is not yet known, but the damage is substantial and will be determined in the course of litigation.

61. It is apparent that Windstream will continue its infringing activities, damaging BT, unless and until enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, BT respectfully demands the following relief for itself and against Defendants ASSIA and Windstream:

(a) That this Court find and enter judgment that each Defendant has infringed each of the Patents-in-Suit;

(b) That this Court issue an injunction enjoining each Defendant and its officers, agents, servants and employees, privies, and all persons in active concert or participation with them from further infringing each of the Patents-in-Suit;

(c) That this Court ascertain and award BT damages sufficient to compensate for ASSIA's infringement of each of the Patents-in-Suit and that the damages so ascertained be trebled and awarded to BT with interest;

(d) That this Court ascertain and award BT damages sufficient to compensate for Windstream's infringement of each of the Patents-in-Suit and that the damages so ascertained be awarded to BT with interest;

(e) That this Court find this case to be exceptional and award BT its attorneys fees, costs, and expenses in this action; and

(f) That this Court grants such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiff BT demands a trial by jury on all issues so triable.

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Dated: October 31, 2014
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